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SECRETARY OF DEFENSE DIRECTS IMPLEMENTATION OF NEW HOMOSEXUAL POLICY

Secretary of Defense Les Aspin today directed the implementation of the President's new policy on homosexual conduct. A memorandum establishing the new policy along with an attachment containing policy guidelines has been sent to the Service Secretaries and the Chairman of the Joint Chiefs of Staff. A copy of that correspondence is attached.

-END-

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THE SECRETARY OF DEFENSE
WASHINGTON, THE DISTRICT OF COLUMBIA

July 19, 1993

MEMORANDUM FOR THE SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE
CHAIRMAN, JOINT CHIEFS OF STAFF

SUBJECT: Policy on Homosexual Conduct in the Armed Forces

On January 29, 1993, the President directed me to review DoD policy on homosexuals in the military. The President further directed that the DoD policy be "practical, realistic, and consistent with the high standards of combat effectiveness and unit cohesion our armed forces must maintain."

An extensive review was conducted. I have paid careful attention to the hearings that have been held by both the House and Senate Armed Services Committees, conferred with the Joint Chiefs and acting Secretaries of the Military Departments and considered recommendations of a working group of senior officers in the Department of Defense and those of the Rand Corporation.

The Department of Defense has long held that, as a general rule, homosexuality is incompatible with military service because it interferes with the factors critical to combat effectiveness, including unit morale, unit cohesion and individual privacy. Nevertheless, the Department of Defense also recognizes that individuals with a homosexual orientation have served with distinction in the armed services of the United States.

Therefore, it is the policy of the Department of Defense to judge the suitability of persons to serve in the armed forces on the basis of their conduct. Homosexual conduct will be grounds for separation from the military services. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to service entry or continued service unless manifested by homosexual conduct.

I direct the following:

Applicants for military service will not be asked or required to reveal their sexual orientation. Applicants will be informed of accession and separation policy.

Servicemembers will be separated for homosexual conduct.

Commanders and investigating agencies will not initiate inquiries or investigations solely to determine a member's sexual orientation. Servicemembers will not be asked or required to reveal their sexual orientation. However, commanders will continue to initiate inquiries or investigations, as appropriate, when there is credible information that a basis for discharge or disciplinary action exists. Authority to initiate inquiries and investigations involving homosexual conduct shall be limited to commanders. Commanders will consider, in allocating scarce investigative resources, that sexual orientation is a personal and private matter. They will investigate allegations of violations of the Uniform Code of Military Justice in an even-handed manner without regard to whether the conduct alleged is heterosexual or homosexual or whether it occurs on-base or off-base. Commanders remain responsible for ensuring that investigations are conducted properly and that any abuse of authority is addressed.

The constraints of military service require servicemembers to keep certain aspects of their personal lives private for the benefit of the group. Our personnel policies will be clearly stated and implemented in accordance with due process of law.

Commanders remain responsible for maintaining good order and discipline. Harassment or violence against other servicemembers will not be tolerated.

Homosexual conduct is a homosexual act, a statement by the servicemember that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

A statement by a servicemember that he or she is homosexual or bisexual creates a rebuttable presumption that the servicemember is engaging in homosexual acts or has a propensity or intent to do so. The servicemember has the opportunity to present evidence that he does not engage in homosexual acts and does not have a propensity or intent to do so. The evidence will be assessed by the relevant separation authority.

A homosexual act includes any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires or any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in homosexual acts. Sexual orientation is a sexual attraction to individuals of a particular sex.

The interim policy and administrative separation procedures that I established on February 3, 1993, will remain in effect until October 1, 1993. Secretaries of the Military Departments and responsible officials within the Office of the Secretary of

Defense shall; by October 1, 1993, take such actions as may be necessary to carry out the purposes of this directive. Secretaries of the Military Departments will ensure that all members of the armed forces are aware of their specific responsibilities in carrying out this new policy. This memorandum creates no substantive or procedural rights. Any changes to existing policies shall be prospective only.

Policy Guidelines are attached.

cc: Secretary of Transportation

A large, stylized handwritten signature in black ink. The signature features a large, circular loop at the top, followed by a vertical stroke that descends and then curves into a series of horizontal, wavy lines. A thick, horizontal line is drawn across the bottom of the signature.

POLICY GUIDELINES ON HOMOSEXUAL CONDUCT IN THE ARMED FORCES

Summary of Policy

- Accession Policy
 - Applicants for military service will no longer be asked or required to reveal if they are homosexual or bisexual, but applicants will be informed of the conduct that is proscribed for members of the armed forces, including homosexual conduct.
- Discharge Policy
 - Sexual orientation will not be a bar to service unless manifested by homosexual conduct. The military will discharge members who engage in homosexual conduct, which is defined as a homosexual act, a statement that the member is homosexual or bisexual, or a marriage or attempted marriage to someone of the same gender.
- Investigations Policy
 - No investigations or inquiries will be conducted solely to determine a servicemember's sexual orientation. Commanders will initiate inquiries or investigations when there is credible information that a basis for discharge or disciplinary action exists. Sexual orientation, absent credible information that a crime has been committed, will not be the subject of a criminal investigation. An allegation or statement by another that a servicemember is a homosexual, alone, is not grounds for either a criminal investigation or a commander's inquiry.

Activities

- Bodily contact between servicemembers of the same sex that a reasonable person would understand to demonstrate a propensity or intent to engage in homosexual acts (e.g., handholding or kissing in most circumstances) will be sufficient to initiate separation.
- Activities such as association with known homosexuals, presence at a gay bar, possessing or reading homosexual publications, or marching in a gay rights rally in civilian clothes will not, in and of themselves, constitute credible information that would provide a

basis for initiating an investigation or serve as the basis for an administrative discharge under this policy.

- The listing by a servicemember of someone of the same gender as the person to be contacted in case of emergency, as an insurance beneficiary or in a similar context, does not provide a basis for separation or further investigation.
- Speech within the context of priest-penitent, husband-wife or attorney-client communications remains privileged.

Off-Base Conduct

- No distinction will be made between off-base and on-base conduct.
- From the time a member joins the service until discharge, the servicemember's duty and commitment to the unit is a 24 hour-a-day, seven-day-a-week obligation. Military members are required to comply with both the UCMJ, which is federal law, and military regulations at all times and in all places. Unacceptable conduct, homosexual or heterosexual, is not excused because the servicemember is not "at work."

Investigations and Inquiries

- Neither investigations nor inquiries will be conducted solely to determine an individual's sexual orientation.
- Commanders can initiate investigations into alleged homosexual conduct when there is credible information of homosexual acts, prohibited statements or homosexual marriage.
- Commanders will exercise sound discretion regarding when credible information exists, and will evaluate the information's source and all attendant circumstances to assess whether the information supports a reasonable belief that a servicemember has engaged in proscribed homosexual conduct. Commanders, not investigators, determine when sufficient credible information exists to justify a detail of investigative resources to look into allegations.

Credible Information

- Credible information of homosexual conduct exists when the information, considered in light of its source and all attendant circumstances, supports a reasonable belief that a servicemember has engaged in such conduct. It requires a determination based on articulable facts, not just a belief or suspicion.

Security Clearances

- Questions pertaining to an individual's sexual orientation are not asked on personnel security questionnaires. An individual's sexual conduct, whether homosexual or heterosexual, is a legitimate security concern only if it could make an individual susceptible to exploitation or coercion, or indicate a lack of trustworthiness, reliability, or good judgment that is required of anyone with access to classified information.

The Threat of Extortion

- As long as servicemembers continue to be separated from military service for engaging in homosexual conduct, credible information of such behavior can be a basis for extortion. Although the military cannot eliminate the potential for the victimization of homosexuals through blackmail, the policy reduces the risk to homosexuals by making certain categories of information largely immaterial to the military's initiation of investigations.
- Only credible information that a servicemember engaged in homosexual conduct will form the basis for initiating an inquiry or investigation of a servicemember; suspicion of an individual's sexual orientation is not a basis, by itself, for official inquiry or action.
- Extortion is a criminal offense, under both the UCMJ and United States Code, and offenders will be prosecuted. A servicemember convicted of extortion risks dishonorable discharge and up to three years confinement. Civilians found guilty of blackmail under the U.S. Code may be subject to a \$2000 fine and one-year imprisonment. The risk of blackmail will be addressed by educating all servicemembers on the policy and by emphasizing the significant criminal sanctions facing convicted extortionists.

Outing

- A mere allegation or statement by another that a servicemember is a homosexual is not grounds for official action. Commanders will not take official action against members based on rumor, suspicion or capricious allegations.
- However, if a third party provides credible information that a member has committed a crime or act that warrants discharge, e.g., engages in homosexual conduct, the commander may, based on the totality of the circumstances, conduct an investigation or inquiry, and take non-judicial or administrative action or recommend judicial action, as appropriate.
- Commanders are responsible for initiating an investigation when credible information exists that a crime or basis for discharge has been committed. The commander examines the information and decides whether an investigation by the Service investigative agency or a commander inquiry is warranted, or if no action should be taken.

Harassment

- Commanders are responsible for maintaining good order and discipline.
- All servicemembers will be treated with dignity and respect. Hostile treatment or violence against a servicemember based on a perception of his or her sexual orientation will not be tolerated.